

SPECIAL CIVIL APPLICATION No 9209 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? -
  2. To be referred to the Reporter or not? - :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? -
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? -
  5. Whether it is to be circulated to the Civil Judge? : NO  
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R P KAPOOR

Versus

GUJARAT SMALL INDUSTRIES CORPORATION LIMITED

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Appearance:

MR RAJNI H MEHTA for Petitioner  
MR PV HATHI for Respondent No. 1

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CORAM : MR.JUSTICE KUNDAN SINGH  
Date of decision: 23/12/1999

ORAL JUDGEMENT

This petition has been filed for quashing the charge sheet dated 16-12-1992 Annexure-B in the departmental proceedings and for a direction to the respondent Corporation to make payment of retirement benefits; provident fund, gratuity, etc.

2. The petitioner was working as Sr. Executive in

the Gujarat Small Industries Corporation Ltd. Some First Information Report (FIR) was lodged by the Civil Supplies Corporation against the employees of the respondent Corporation at Navrangpura Police Station in the year 1982. The petitioner was placed under suspension by the order dated 4-2-1984 and the show cause notice dated 18-2-1984 was issued to the petitioner as to why the departmental inquiry should not be held against the petitioner. The petitioner submitted his reply to the show cause notice on 14-3-1984. It is also stated that the petitioner and other co-employees were arrested in the criminal case lodged by the Civil Supplies Department and later on the petitioner and other co-employees were released on bail. The suspension was revoked by the order dated 15/20-12-90 keeping the departmental proceedings pending against the petitioner as the criminal proceedings were pending against him. The charge sheet was submitted against the petitioner and four other employees of the respondent Corporation on 16-12-1992 giving an opportunity to file their reply within a period of seven days otherwise the departmental proceedings will proceed ex-parte. On 23-12-1992 this petition was filed. On 24-12-92 the petition was taken up. The notice was issued returnable on 25-1-1993 and ad-interim order staying the further departmental proceedings was granted. The petitioner was to retire due to superannuation age on 31-12-1992. But the petitioner received the order dated 24-12-1992 informing that the petitioner is permitted to retire on 31-12-1992 and the retirement benefits are subject to the result of the departmental proceedings pending against the petitioner. This petition was admitted on 15-4-1993 and the interim relief granted earlier was made absolute till further order. In the year 1993 the charge sheet was filed in the Criminal Case No. 63/93 in the Court and the charge sheet was quashed and set aside by the Sessions Court vide the judgment dated 29-7-1996 on the ground that the prosecution is barred by limitation. But the order has become final and that cannot be considered at this stage and the criminal proceedings against the petitioner were dropped vide the order dated 29-7-1996 by the Sessions Court.

3. Contention of the learned counsel is that co-delinquent employee Smt. Champaben was allowed to premature retirement and three other delinquents have been given increments. Therefore, it is improper on the part of the respondent department to continue the departmental inquiry proceedings after retirement of the petitioner. As such, the departmental inquiry proceedings are malafide and not sustainable in the eye

of law. Once the suspension order was revoked by the order dated 15/20-12-1990 and the petitioner was given full charge in that case it would not be proper for the respondent department to continue the departmental inquiry proceedings against the petitioner. The petitioner has also claimed parity on the basis of the co-delinquent employee Champaben who was allowed premature retirement. The charge sheet was not filed and the other three delinquent employees have been given increments. Continuation of the departmental inquiry proceedings against the petitioner after 11 years is not only malafide but also improper and not sustainable in the eye of law. No rule or provision to hold departmental inquiry proceedings against the retired employee is contemplated in the Staff Service Rules, 1994. Learned counsel for the petitioner relied on the judgment in the case of State of Andhra Pradesh Vs. N. N. Radhakishan, reported in 1998 (4) SCC 154.

4. Heard learned counsel for the parties and perused the relevant papers on record. I have considered the contentions raised by the learned counsel for the parties. It appears that in the present case, the notice was issued and later on the petition was admitted on the ground that when the criminal proceedings and departmental inquiry proceedings were going on simultaneously at one and the same time, it would not be proper to continue the departmental inquiry proceedings during the pendency of the criminal proceedings otherwise the defence of the petitioner would be prejudiced.

5. No doubt, there is no rule laid down by the Supreme Court that the criminal proceedings and departmental proceedings cannot go simultaneously. But in the interest of justice the Court can direct the department to stay the departmental proceedings during pendency of the criminal proceedings. It is also held by the Supreme Court that if there is undue delay in concluding the criminal proceedings, the department can start departmental proceedings against the delinquent employee. In the present case, prima facie it appears that the learned counsel for the petitioner might have stated before this Court that the criminal proceedings as well as departmental proceedings are going on simultaneously against the petitioner and the petitioner's defence in the departmental proceedings will be prejudiced if the departmental proceedings are directed to proceed with in view of the defence taken in the criminal proceedings. As such, this Court has granted interim relief staying the departmental proceedings and that stay is still continued. No doubt

the criminal proceedings have already been dropped against the petitioner by the Sessions Court vide order dated 29-7-1996. There is no rule that the departmental proceedings started against the delinquent employee prior to retirement should not be continued and there is no bar that only on the ground of delay the charge sheet of the departmental proceedings should be quashed. Learned counsel for the petitioner submitted that co-delinquent employee Champaben was allowed premature retirement and other co-employees have also been given increments and on the basis of parity the petitioner is also entitled to be exonerated from the charges made in the charge sheet against the petitioner. But I am of the opinion that if any illegal order has been passed by the department giving any benefit to the delinquent employee that wrong order would be a precedent to give benefits to the present petitioner. It may be that the department concerned might have considered that all the charges and allegations made against the petitioner and other co-delinquent employees in case the department comes to a conclusion that the petitioner is the main person for the incident which had taken place in the year 1982 and the allegations against the other co-delinquent employees are not so serious, then it is the discretionary power of the department concerned to give benefits to other co-delinquent employees and not to give any benefit to the petitioner. As such, the contention of the learned counsel for the petitioner that on the ground of parity the benefits given to other co-delinquent employees should also be given to the petitioner is not justified in the eye of law. So far as the delay in initiating the departmental proceedings is concerned, the learned counsel for the petitioner could not point out any case law or any decision of the Apex Court that the departmental proceedings instituted against the employee after his retirement should be quashed and set aside and are not liable to be continued. As such, I do not think that on the ground of delay any departmental proceedings continued against the employee after his retirement can be quashed and set aside. I do not find any good ground either in the statutory rules applicable to the petitioner or any decision of the Apex Court that the departmental proceedings after retirement of the petitioner cannot continue. Thus, the departmental proceedings initiated before retirement of the petitioner are justified to be continued after his retirement.

6. However, in the facts and circumstances of the case, the respondents are directed to proceed with the departmental proceedings as early as possible and

conclude the same within a period of four months from the date of production of a certified copy of this order. The petitioner is directed to cooperate in the departmental proceedings.

7. Learned counsel for the petitioner submitted that even after retirement of the petitioner, the retirement benefits including the gratuity amount have been withheld by the respondent Corporation. However, the petitioner is entitled to get gratuity amount and he has relied on the judgment in the case of R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, reported in 1994 (6) SCC 589. In view of the rule laid down by the Supreme Court in the above decision the petitioner is entitled to the gratuity amount. Therefore, the respondent Corporation is directed to pay gratuity amount permissible under the relevant law and rules within one month from the date of production of a certified copy of this order.

8. Thus, this petition has no merit and is liable to be dismissed. Accordingly, this petition with the above observations is dismissed. Rule is discharged with no order as to costs. Interim order passed by this Court stands vacated.

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/JVSatwara/